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RONALD BERGER
P.L. 100-2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-187473

DATE: December 15, 1976

MATTER OF: University Constructors, Inc. - Reconsideration

DIGEST:

Prior decision dismissing as untimely protest against cancellation of invitation for bids is affirmed since record shows that protester did not comply with GAO Bid Protest Procedures either in filing protest initially with contracting agency or in subsequent protesting to GAO.

University Constructors, Inc. (University) requests reconsideration of our decision in B-187473, October 4, 1976, 76-2 CPD 305, wherein we dismissed as untimely University's protest against the rejection of bids and cancellation of invitation for bids (IFB) No. DACA63-76-B-0074, issued by the Corps of Engineers, Fort Worth District, Department of the Army (Army).

University's initial submission included documents which indicated that by letter dated July 15, 1976, the Army informed University that award under the IFB would not be made and that "the invitation is cancelled and all bids are rejected." University objected to this action by letter dated August 18, 1976. University subsequently protested to our Office on September 15, 1976.

The protest was determined to be untimely because "University did not respond to the notice of cancellation until more than 10 working days after receipt of the Army's notification letter" and, in addition, because "University did not file a protest with this Office within 10 working days of its receipt of the Army's letter of August 18, 1976."

In requesting reconsideration of our decision, University asserts that its protest should be considered timely because it was not until September 13, 1976, that it had grounds for protest because it was on that date that it became aware that the information provided in the Army's letter of August 18, 1976, was false.

We remain of the view that the protest is untimely. University first learned that the IFB was being canceled when it received the Army's July 15 letter. University's August 6 response to this

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letter, which University itself describes as a "protest", resulted in the Army's letter of August 18, which advised University that "the basic need for this project and two others at the same installation was being reevaluated * * *. In view of this, the contracting officer determined that all three invitations should be canceled because the construction was no longer required."

University's reconsideration request is based on its allegation, nowhere contained in its initial protest submission, that it first learned on September 13 that the construction work was still required. In effect, University asserts that it had no grounds for protest when it was informed by the Army that "the construction was no longer required," but that grounds for protest to this Office did arise when it learned that the Army again has a requirement for the work covered by the canceled IPB.

We do not agree. We think it is clear that the protest goes to the propriety of the IPB cancellation and that University was on notice of that cancellation upon its receipt of the Army July 15 letter. First of all, University admits that it protested the cancellation to the Army after it received that July 15 letter. Secondly, we do not think University was justified in regarding the Army's August 18 letter as unequivocally stating that the Army would not have a need for the construction work. We believe the only reasonable reading of that letter is that the Army, as of the date of cancellation, did not have a current valid requirement for the work because of the reevaluation being conducted, but that a future need, resulting from the conclusion of the reevaluation, was not precluded. Accordingly, we view University's protest as going to the Army's justification (the need to reevaluate construction requirements) for the cancellation and thus to the cancellation itself.

Section 20.2 of our Bid Protest Procedures states:


"(a) * * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section * * *.

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"(b) * * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 20.2 (1976).

It is eminently clear from subsection (a) that a protest initially lodged with the agency must be filed there in accordance with the timeliness requirements of subsection (b) if GAO is to subsequently consider the matter. It is also undisputed that University did not protest the cancellation to the Army within 10 days after its receipt of the Army's letter of July 15, 1976, and did not protest to this Office until more than 10 days after its receipt of the Army's August 18 letter. Under these circumstances, we must view the protest as untimely for the reasons stated in our prior decision.

Accordingly, that decision is affirmed.


Deputy Comptroller General
of the United States